1921.

G.F.66(a)

...rtment of Land Revenue

OFFICE Board of Revenue

STATION Ekepank

Mis **No.** 1481	
Dated 27. 4. 21	

To whom sent		Date	Initial.
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(SUBJECT.)

Village Officers (S. Kanara) Udipi taluk Mudarudamber village - Headman Nonda Shetty - Appointment. Second appeal - Collector's order Cancelled.

* Not to be filled in the case of permanent records.

R 41. Mangalore

D 309

Dis files - 5
Sheets -

D. Dis. 1804--V--1--21.

South Kanara Collector's Office,
Mangalore, dated 8th April 1921.

From

R. H. Ellis, Esq., I.C.S.,

Collector of South Kanara.

To

The Secretary to the Board,

Land Revenue, M a d r a s.

BOARD OF REVENUE
14 APR 1921
LAND REVENUE DEPT.
MADRAS

Abstract
Forwarding the second appeal of Thuvda Shetty regarding his claims to the headman's office of Mudanidambur village Udipi Tk.

Village Officers---Udipi Taluk---Mudanidambur village--Potailship--Appeal petition--Thuvda Shetty.

I submit herewith the petition of Thuvda Shetty appealing against the Collector, Mr. U. Rama Rao's order cancelling the petitioner's appointment as Potail and appointing Shesha Shetty instead together with the marginally noted records.

1. Collector's Dis. file No. R. Dis.125--V--1--20
2. Divisional Officer's " 73 R/Rev. 20.
3. ----do------ " 1066 D/Rev. 18.
4. Taluk Dis. file No. 65 R/Rev. 20.
5. " 216/Rev. 07.
6. Tahsildar's endorsement on the petition dated 3rd March 1921.
7. Divisional Officer's ---do--- dated 16th March 1921.
8. Divisional Officer's further report dated 31st March 1921.

*Verified.

2. It is not compulsory ---------- that the village head-man should pass the Special Tests. An oral examination by the Divisional Officer in order to satisfy himself that the candidate possesses sufficient literary -- education to perform the duties of a village head man is enough.

Rule 21 at page 61 of Part II Regs. the analogy of which applies to the present case.

3. As regards the last sentence of para 7 of the petition, no such evidence appears to have been recorded.

4. Pending Board's order on this petition, the counter

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TO

THE HONOURABLE MEMBERS OF THE BOARD OF REVENUE,

(L a n d R e v e n u e)

M A D R A S.

Through ;

(1) The Tahsildar of Udipi Taluk,

2) The Revenue Divisional Officer, Coondapur Dn.

a n d

(3) The Collector of South Canara.

Humble petition of Thouda Shetty, nephew of Bommaya Shetty, residing in Mudanidambur Village, Udipi Taluk,

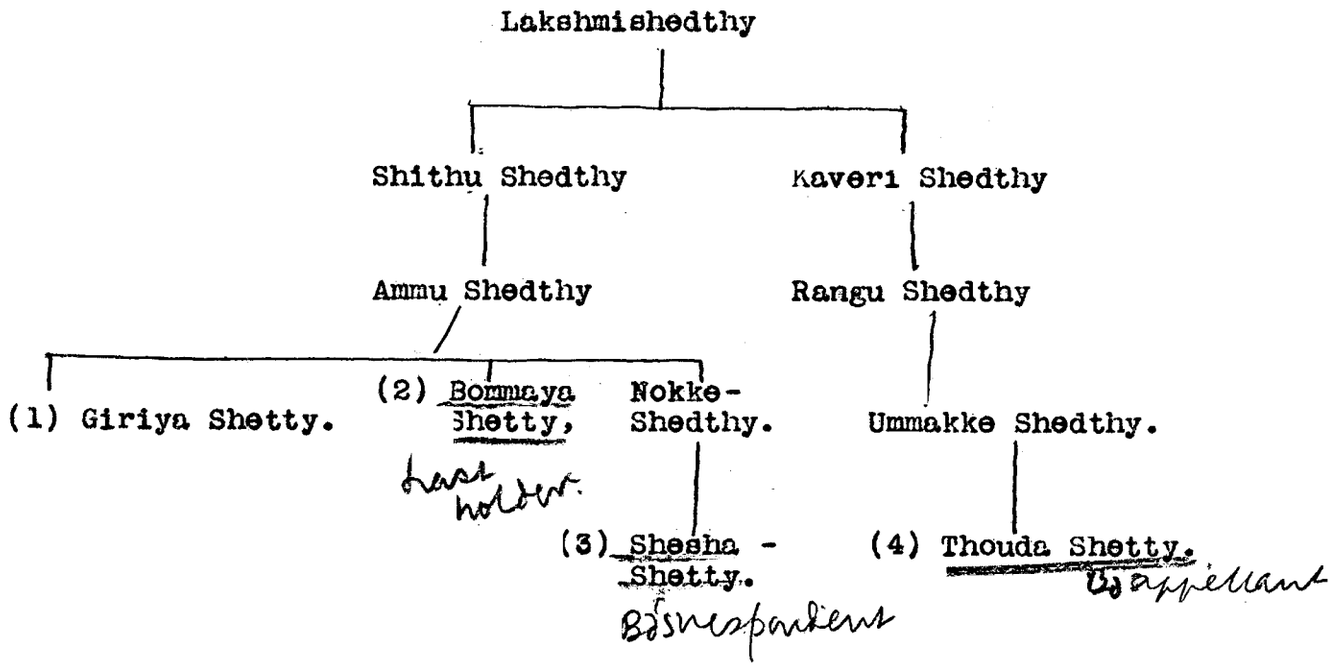
Dated 17th. February 1921.

Most respectfully sheweth as follows :-

The Potailship of Mudanidambur village belongs to the petitioner's family which is governed by the Aliyasanthana law of inheritance. The last holder of the post, Bommaya Shetty by name, resigned it in May 1920 and the petitioner was appointed to it by the Revenue Divisional Officer, Coondapur Division after proper enquiry as to who was entitled to succeed to the post. Giriya Shetty, the elder brother, and Shesha Shetty, a nephew. of the last permanent potail, appealed to the Collector against the Divisional Officer's order of appointment and the Collector cancelled that order and appointed the 2nd appellant Shesha Shetty to the post, 1st. appellant Giriya Shetty having waived his claim in favour of the former. The petitioner most humbly seeks for a revision of the Collector's order on the following among other grounds.

2. The genealogical table of the petitioner's family, so far as is necessary to determine who is entitled to succeed the post, is given below :-

akshmishedthy



No 4 in the above geneological table is the present ---- petitioner and No.2 is the last permanent Potail. Nos. 1 & 3 are the 1st. and 2nd. Appellants before the Collector.

3. The petitioner admits that No. 3 who has now been appointed by the Collector is a near heir to the last permanent potail than the petitioner; but the petitioner is also a heir coming next in the order of succession. Under Sec: 10(1)(d) of Madras Act III of 1895, No. 3 is ineligible for appointment in-as-much-as he has not passed the Village Headman's test prescribed in Rule 21 of the rules framed under Sec: 20 of the said Act; and Sec: 10 (3) Ibid lays down that, when the next heir is ineligible under any of the clauses of Sec: 10 (1), the qualified and eligible heir if any next in the order of succession should be appointed. The Divisional Officer's order appointing the petitioner, whose claim to be a qualified and eligible heir next to No.3 cannot be ~~called~~ denied, should have ~~him~~ therefore been held to be legally correct. The rules laid down by the law quoted above being imperative, the Collector's order appointing No. 3 to the post ousting the petitioner is ultra-vires.

4. The Collector was wrong in presuming that the petitioner also has not passed the full test prescribed for the Headman's post. It is true the petitioner had not, at the time of his

(L) appointment by the Divisional Officer in June 1920, passed in one of the branches of the test viz: Village Sanitation, but he had appeared for examination in that branch in October 1920 and had completed the test at the time of the disposal of the appeal by the Collector in January 1921.

(Q) 5. Apart from the fact that the Collector's order appointing No.3 on condition of his fully qualifying himself within a year is legally ultra-vires as explained in para 3 supra, the condition laid down by the Collector is itself impossible to be fulfilled in-as-much as No.3 is already an old man of 51 years of age and cannot now study for the test and pass it, as the Revenue Inspector has rightly reported.

6. The Collector was also wrong in presuming that the claims of No.3 were not considered either by the Tahsildar when recommending petitioner's confirmation, or by the Divisional Officer when appointing him to the post. A perusal of the original records will show that the Revenue Inspector had submitted a complete (P5(a)) geneological table of the family and discussed the claims of all heirs including those of No.3, that the Tahsildar recommended petitioner's confirmation agreeing with the Revenue Inspector's views. and that the Divisional Officer approved of the Tahsildar's recommendation so made. The use of the prescribed form of recommendation roll would not have given a different colour to the matter and the omission to use it does therefore make any difference.

7. The Collector was also wrong in making light of what he calls " general observations about the antecedents and property qualifications" of No.3. They are observations of responsible local officers who cannot have any motive either to injure No. 3 or to favour the petitioner.

No.

No. 3 is out of employ since 1906, and if the records relating to his antecedents when he was an acting potail before 1906, are not now forthcoming, they have probably been destroyed. But there are to-day persons who know why he was never again entertained as acg. potail even in the post to which he was the next heir, and the observations are therefore well founded. An old peon or the Taluk Office has given evidence regarding his ----- antecedents and there is no earthly reason why he should be disbelieved.

The Collr reports that no such evidence appears to have been recorded - p 10

8. The Collector was also wrong in supposing that the -- petitioner(s) has also no property of his own. He has recently purchased two valuable gardens in the Udipi Town, and being the only son of his mother, is entitled to all her own property worth about Rs.8000/- besides possessing his interest in the joint family property like all other members of the family, whereas all that No.3 has is his interest in the joint property of the family.

The Talr reports so — p 9 (Q)

9. Last but by no means the least important, the petitioner is now acting in the post in question for the last about 12 years and he has therefore certainly acquired a moral claim to be confirmed in it when it has permanently fallen vacant.

see page 2 of Rdr's report (X)

In conclusion therefore, the petitioner prays most humbly and respectfully that the Honourable Board may be ---- graciously pleased to cancel the Collector's order and restore that of the Divisional Officer; for which act of kindness and justice, the petitioner shall, as in duty bound, ever remain grateful.

(Q) (L)

M Dhareshwar Shetty

[illegible]

[illegible]

[illegible]

Village officers (S. Kanara) – Udipi taluk – Mudanidambur village – Headman Bhonda Shetty – Appointment – second appeal – Collector order cancelled.

M1-24 - D 339/21 — P

Res (Mis) 48/27.4.21

On view of the R.D.O reports that the Board's respondent is insolvent, that there are civ warrants against him, that he has been wandering from place to evade arrests ~~of debtors~~ and that it is dangerous to appoint him as headman of an important village like Mudanidambur, the Board resolves to cancel the Collectors order appointing the Board's respondent Sesha Shetti, and to restore the R.D.O's order

2. The appellant is referred to the Collector for orders on his appeal to the Board

specific

that he is wandering about seeking to evade arrest under civil warrants out against him

MK 27.4

26.4.21 RD 26.4.21

To the appellant (Parasaranga)

RD/29.4.

Village officers (S. Kanara) — Udipi Taluk — Muddambur village — Headman Thoota Shetty — Appointment — Second appeal

M 1 Secy. A.S

M 1-2 cf. — letter from the Collector of S. Kanara D. Dis. 1804-V-1-21 & 8.4.21, L.D 339/21

To the ~~Asst~~ Secy.

M 3-6 cf. This second appeal against an order of appointment to a non-hereditary headman's office is admissible under

M 331 of Vol I para 3 of M.S.O. 156 and is in time.

2. The facts of the case are fully given in the Collector's order ~~in the matter~~ at flag (Q), to which reference is solicited.

3. Though the office in question is non-hereditary, hereditary principles are observed in such cases as far as may be. The respondent is admittedly a nearer heir to

M 4 cf. para 3. the last office holder than the appellant and was rightly preferred to the appellant.

(Q) The Collector's order is correct so far

It has however to be ~~observed~~ noted that the respondent is ~~reported~~ to be an insolvent, that civil warrants ~~are out~~ against him, that he has been wandering from place to place to evade ~~by reason of~~ and that it is

M 17 of (Q) flag (X)

is dangerous to appoint him as headman of an inborn ~~[illegible]~~ like Mudanidam but while these facts were proved to the knowledge of the Collector ~~at the time~~ the appeal before him was pending he simply observed (A) that beyond general observations about his (respondents) antecedents and property qualifications which he has had no chance of meeting were aimed to unfairly disqualify him from holding the office and ~~in~~ result appointed him to the post. In his report on the second appeal to the Board the K.D.O. observes that the observations made against the respondent by the ~~Revenue~~ Inspector, the Tahsildar and myself were not general observations but were based on enquiries that even though the order appointing the respondent as headman was passed 2½ months ago he did not join duty ~~[illegible]~~ being unable to do so owing to civil warrants against him which he has been evading but wandering about

p.17 of (8)

for (8)

14/6/16

M.S-9 of (8)

(Q) The question for consideration is whether the Board would uphold the Collector's order now appealed against or would deem it to cancel it in view of the opinion of the local officers as regards the undesirability of appointing the respondent to the post on the ground that he is an insolvent and that there are civil warrants against him in connection with debts.

Orders are requested.

21.4.21

21.4.21

The office is not hereditary. There is no necessity to appoint a man who has no property and who is in hiding to escape arrest for debt. The Collr says that the man had no means of meeting his objections. The Collr might of have given him time before setting aside the orders. The order may be cancelled.

9.7.21

The face of this K.W.O. D. 179 A is most extraordinary

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Whether the Govt. revokes the R.D.O.
order the main authorities of Govt.
in no way better than the
R.D.O. main and it is in many ways
in many much worse.
Govt's order may be cancelled R.D.O.
restricted.

very strange

MLP
25.IV.41.

Govt
25.4

MS.
For issue order

Draft submitted

Govt
29.4